

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

Microsoft Corporation,	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:08cv596 (GBL)
	)	
L&Y Electronics, Inc.,	)	
John A. Linton,	)	
Sansoon Linton,	)	
Defendants.	)	

ORDER

THIS MATTER is before the Court on Plaintiff Microsoft Corporations' Motion to Strike Defendants' Fourth, Fifth, Eighth, and Ninth Affirmative Defenses, and Motion to Dismiss Defendants' Counterclaims. For the reasons stated in open court on September 5, 2008, it is hereby

ORDERED that Plaintiff's Motion to Strike Defendants' fourth affirmative defense, copyright misuse is GRANTED because Defendants have failed to allege that Microsoft has sought to limit their ability to use or distribute property that Microsoft does not properly control under its copyright. It is further

ORDERED that Plaintiff's Motion to Strike Defendants' fifth affirmative defense, trademark misuse, is GRANTED because Defendants have failed to provide appropriate support for their arguments on this point relating to issues of statutory damages, confusion and abandonment. It is further

ORDERED that Plaintiff's Motion to Strike Defendants' eighth affirmative defense, and Plaintiff's Counterclaim alleging

antitrust violations, are GRANTED because Defendants have not pleaded sufficient facts to constitute an exception to the Noerr-Pennington Immunity Doctrine. It is further

ORDERED that Plaintiff's Motion to Strike Defendants' ninth affirmative defense, unclean hands, is GRANTED because the use of an undisclosed agent by Microsoft does not constitute unclean hands. It is further

ORDERED that Plaintiff's Motion to Dismiss Defendants' counterclaim alleging breach of warranty is GRANTED because Defendants have failed to allege sufficient facts under Federal Rule of Civil Procedure 8(a) to indicate the existence of an agreement between the parties as necessary to form the basis for a claim of breach of warranty.

The Clerk is directed to forward a copy of this Order to counsel.

Entered this 11<sup>th</sup> day of September, 2008.

Alexandria, Virginia  
09/ 11 /08

/s/  
Gerald Bruce Lee  
United States District Judge